

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

IN THE MATTER OF THE APPLICATION
OF THE UNITED STATES OF AMERICA
AUTHORIZING THE DISCLOSURE
OF DATA RELATING TO A SPECIFIED
CELLULAR TELEPHONE

13-M-234

AMENDED AFFIDAVIT OF TASK FORCE OFFICER JAY NOVAK¹

I, Jay Novak, having been duly sworn on oath, state as follows:

I. BACKGROUND

1. I am a state certified law enforcement officer currently employed by the State of Wisconsin, Department of Justice, Division of Criminal Investigation (hereinafter "DCI"), as a Special Agent and have been so employed for the last twenty years. I am also a federally deputized task force agent for the United States Department of Justice, Federal Bureau of Investigation (FBI).

2. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, in that I am empowered by law to conduct investigations of and to make arrests for federal felony offenses. This affidavit is based upon my personal knowledge, and upon information reported to me by other federal, state, and local law enforcement officers during the course of their official duties, all of whom I believe to be truthful and reliable. Because this affidavit is submitted for the limited purpose of securing authorization to receive location information from the subject telephone, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that

¹ Original affidavit, under 13-M-234, listed the incorrect mobile identification number at paragraphs 3, 36, and 38. The correct mobile identification number is 414-306-1606.

I believe are essential to establish the necessary foundation for an order authorizing receipt of cell site information from the target telephone.

II. TELEPHONE TO BE MONITORED

3. This affidavit is submitted in support of an application for an order authorizing the disclosure of data relating to the following cellular telephone:

A T-Mobile cellular telephone bearing mobile identification numbers **414-306-1606** (hereinafter "target telephone"), known to be used by Mario Bailey.

III. PROBABLE CAUSE

4. During 2012, special agents of the Wisconsin Department of Justice, Division of Criminal investigation investigated a group of individuals that were involved in the distribution of heroin and cocaine base in the Milwaukee area (hereinafter "DTO").

5. During the course of the investigation, a confidential informant (hereinafter "CI-1") identified a Milwaukee based source of heroin for the DTO as a black male named "Tre."

6. In December 2012, case agents arrested four individuals on arrest warrants issued by the Honorable Nancy Joseph in the Eastern District of Wisconsin charging the subjects with conspiracy to distribute heroin and cocaine base. The four individuals, including CI-2 and CI-3 referred below, were subsequently indicted on charges of conspiracy to distribute heroin and cocaine base.

7. During a post arrest, *Mirandized* statement and subsequent proffered statement, CI-2 stated that a heroin source of supply for the DTO was a black male named "Tre." CI-2 said that Tre resides on the east side of North 28th Street, south of West Burleigh Avenue in Milwaukee. CI-2 identified one of the other arrested coconspirators as the individual who obtained the heroin from Tre and then distributed the heroin to the other coconspirators.

8. CI-2 also stated that an individual known as Mike, identified via photograph by CI-2 as Mario Bailey, was also a heroin source in 2012 for the other arrested co-conspirator. CI-2 recalled an occasion when CI-2 and the other arrested co-conspirator met with Bailey and Bailey displayed to them two different 25 gram quantities of heroin which were of two different qualities. CI-2 obtained a quantity of one of the types of heroin and provided it to some customers of CI-2. The customers subsequently told CI-2 that the heroin was not very good quality so CI-2 did not purchase any from Bailey.

9. The coconspirator identified as obtaining heroin from Tre and distributing it to the other coconspirators, subsequently provided a proffered statement in January 2013. This subject (hereinafter "CI-3") identified Tre as CI-3's source of supply for heroin from August of 2012 until the time of CI-3's arrest in December 2012. CI-3 stated that they were obtaining 50 gram quantities of heroin from Tre on a weekly basis. CI-3 provided 414-349-7217 as Tre's cellular telephone number and identified various vehicles that Tre drives, and stated that Tre resides in the upper unit of a two family dwelling on the eastside of North 28th Street, near West Chambers Street in Milwaukee.

10. CI-3 further stated that Tre travels to Chicago, IL weekly to obtain multi-hundred gram quantities of heroin from a Chicago based source of supply. CI-3 also stated that a female individual named "Katie" and a white male reside in the lower unit of Tre's residence and are involved in assisting Tre in distributing heroin.

11. CI-3 also stated that an individual known as Mike, subsequently identified by CI-3 via photograph as Mario Bailey, was a heroin dealer and offered to supply CI-3 with quantities of heroin in late 2012. CI-3 and CI-2 then met with Bailey and Bailey displayed two 25 gram quantities of two different types of heroin to CI-3 and CI-2. CI-2 obtained a quantity of one of

the types of heroin which CI-2 provided to a customer of CI-2 but the customer did not like the quality.

12. Case agents have reviewed cellular telephone data of the four arrested subjects which had been obtained via pen register and trap and trace orders signed in the Eastern District of Wisconsin.

13. Case agents discovered that between June 30, 2012 and December 17, 2012, there were over 700 telephone contacts between the cellular number of CI-3 and the cellular number provided by CI-3 for Tre (414-349-7217).

14. In the past four months, I received information from other law enforcement agents, including investigators from the Milwaukee Metropolitan Drug Enforcement Group and the Oak Creek Police Department regarding this investigation. Case agents obtained additional information from other confidential informants (hereinafter "CI-4" and "CI-5"). CI-4 identified "Tre" as Trivon Carter via photograph and CI-4 identified Carter's residence as 3022 N. 28th Street, Milwaukee which is consistent with the description and address provided by CIs 2 and 3. CI-4 also informed case agents that Carter previously used telephone number 414-349-7217 but approximately a month ago changed his cellular telephone number to 414-699-1880. CI-5 identified "Katie" as Katheryn Duvergey who resides in the lower unit of Carter's residence at 3020 N. 28th Street. Case agents believe Duvergey acts as a distributor of heroin for Carter. In the past, CI-5 purchased quantities of heroin from Duvergey and both CI-4 and CI-5 identified a green Ford Expedition that Duvergey uses when delivering quantities of heroin to customers. CI-4 identified the green Ford Expedition as Carter's vehicle.

15. From February 27, 2103 to March 22, 2013, investigators utilized CI-4 to conduct controlled purchases of quantities of less than two grams of heroin from Duvergey. The

suspected heroin was field tested on each occasion and field tested positive for the presence of heroin. Duvergey was driving a green Ford Expedition during each of the transactions, with multiple license plates on the vehicle. The most recent license plate observed on the vehicle in the past week revealed that the Ford Expedition is registered to Duvergey but is expired.

16. On March 6, 2013, the Honorable Patricia J. Gorence signed pen register and trap and trace orders for the cellular telephone bearing mobile identification number 414-699-1880.

17. On March 11, 2013, under 11-M-208, the Honorable Patricia J. Gorence signed a warrant authorizing the disclosure of data including location monitoring data relating to cellular telephone bearing mobile identification number 414-699-1880. This warrant expired on April 25, 2013.

18. On March 22, 2013, the Honorable Patricia J. Gorence signed a warrant for an electronic tracking device to be installed on a green 1999 GMC Sierra pickup, WI license FC9291, registered to Erwin J. Miller. Investigators observed Carter driving this vehicle on numerous occasions and was a vehicle identified by CI-3 as the vehicle utilized by Carter to travel to Chicago to pick up quantities of heroin. Investigators were subsequently able to affix a GPS tracking device on the vehicle.

19. Upon a review of the pen register and trap and trace data, S/A Novak observed that Carter has frequent contact with Chicago telephone numbers, with the cellular telephone numbers of Kathryn Duvergey and Erwin Miller and also with numerous other known drug traffickers.

20. Upon a review of the GPS data from the GMC Sierra pickup and the location monitoring data of target telephone number 414-699-1880, S/A Novak observed that the vehicle and cellular telephone frequently travels to the areas of where these other known drug traffickers

reside and frequent. In addition, the vehicle and cellular telephone has also made multiple trips to Chicago, with a brief stay of less than one hour in Chicago and then returns to Milwaukee which S/A Novak believes is indicative of conducting drug transactions.

21. In early April, 2013, through a review of the pen register and trap and trace data of Carter's cellular telephone number 414-699-1880 and a review of call detail records of Chicago area numbers frequently called by 414-699-1880, another cellular telephone number, target telephone number bearing mobile identification number 414-627-6262 was identified and through law enforcement and public databases as being used by Carter.

22. On April 16, 2013, the Honorable William E. Callahan Jr., signed pen register and trap and trace orders for target cellular telephone bearing mobile identification number 414-627-6262.

23. On April 19, 2013, investigators observed via the location monitoring data from the GPS on the GMC Sierra pickup and Carter's cellular telephone 414-699-1880 that both were enroute to the Chicago area. Investigators subsequently observed Duvergey, Carter and Miller in the GMC Sierra, with Duvergey as the driver, travel to and park at a location in Chicago. Investigators subsequently observed Carter exit the vehicle, meet with another vehicle briefly and after exiting the vehicle Carter was carrying a bag. Carter reentered the GMC Sierra and the vehicle travelled back to Milwaukee and went directly to 3020-3022 N. 28th Street. The activity is consistent with a drug transaction.

24. On April 26, 2013, the Honorable William E. Callahan Jr. signed warrants authorizing the disclosure of data including location monitoring data relating to cellular telephone bearing mobile identification number 414-627-6262 and cellular telephone bearing mobile identification number 414-699-1880. These warrants are set to expire on June 10, 2013.

25. On May 2, 2013, the Honorable Patricia J. Gorence signed extensions for pen register and trap and trace orders for the cellular telephone bearing mobile identification number 414-699-1880.

26. Case agents reviewed pen register and trap and trace data from both 414-699-1880 and 414-627-6262, and observed both numbers had a large volume of calls with the same known drug traffickers and with the same Chicago area telephone numbers believed to be Carter's source of supply.

27. Case agents observed on the pen register and trap and trace data from both 414-699-1880 and 414-672-6262 that there were a total of 292 contacts between those two cellular telephone numbers of Carter and the target number 414-306-1606.

28. Case agents obtained a subpoena for subscriber information on target number **414-306-1606**. The phone records list the subscriber as "Mario Bailey." In addition, Bailey's known prior address was also listed in the subscriber information on target number **414-306-1606**. Furthermore, the subscriber address for **414-306-1606** is the same as an address for Mario Bailey in law enforcement records.

29. Between April 23, 2013 and June 4, 2013, investigators observed via the location monitoring data from the GPS on the GMC Sierra pickup and Carter's cellular telephones that Carter made numerous short duration trips to Chicago Illinois which I believe to be drug transactions.

30. On one of the trips which occurred on May 8, 2013, investigators observed Carter, Duvergey and Miller travel to Chicago and go to the same area as on April 19, 2013. I observed Carter meet with the same Dodge Durango that Carter met with on April 19. Carter then drove back to Milwaukee in the GMC Sierra with Duvergey and Miller.

31. Investigators identified the driver of the Dodge Durango and determined that the subject was a target in a previous federal heroin investigation in the Chicago area.

32. On numerous occasions upon returning to Milwaukee, Carter, Duvergey and Miller were observed travelling back to Carter's residence. I observed via pen register and trap and trace data from Carter's cellular telephones that Carter consistently had telephone contact with other known drug traffickers prior to and upon return from Chicago.

33. Case agents also observed from the pen register and trap and trace data on Carter's cellular telephones that Carter frequently had contact with the cellular telephone number of Mario Bailey, target number **414-306-1606**, just prior to leaving and upon returning to Milwaukee on some of Carter's trips to Chicago.

34. In November 2012, DCI Special Agent Raymond Taylor interviewed a confidential informant, CI-6, who identified Mario Bailey via photograph as a heroin source in the Milwaukee area. CI-6 stated that CI-6 had purchased heroin from Bailey on approximately 6 occasions in 2012.

35. In February 2013, S/A Taylor interviewed another confidential informant, CI-7, who identified Mario Bailey via photograph as a heroin dealer in the Milwaukee area. CI-7 stated that Bailey obtains heroin from the Chicago Illinois area. CI-7 had purchased heroin from Bailey and an associate of Bailey in 2012. CI-7 also accompanied Bailey to Chicago in 2012 when Bailey obtained heroin. CI-7 stated that Bailey would pick up between 100 and 200 grams of heroin in Chicago.

36. On June 6, 2013, the Honorable William E. Callahan Jr. signed pen register and trap and trace orders for the cellular telephone bearing mobile identification number **414-306-1606**.

37. I know that drug traffickers commonly obtain controlled substances from more than one source which is based upon availability and the price of the controlled substances.

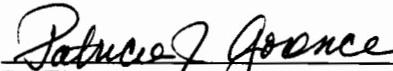
IV. CONCLUSION

38. This application seeks an order authorizing the disclosure of data related to the position of a cellular telephone bearing mobile identification number **414-306-1606**, currently believed to be utilized by Mario Bailey, for the purpose of providing evidence of locations used by Mario Bailey and other individuals involved with Mario Bailey in drug trafficking.



JAY NOVAK
Task Force Officer
Federal Bureau of Investigation
United States Department of Justice

Sworn to and subscribed before me
this 11th day of June, 2013.



PATRICIA J. GORENCE
United States Magistrate Judge
13-M-234 (Amended)